

1 BUCHALTER
2 A Professional Corporation
3 WILLMORE F. HOLBROW III (SBN: 169688)
4 1000 Wilshire Boulevard, Suite 1500
5 Los Angeles, CA 90017-1730
6 Telephone: 213.891.0700
7 Facsimile: 213.896.0400
8 Email: wholbrow@buchalter.com

9 *Attorney for Defendants Health In Motion LLC*
10 *and Leisure Fitness Equipment LLC*

11 BLACKBIRD TECHNOLOGIES
12 Wendy Verlander (*pro hac vice*)
13 One Boston Place, Suite 2600
14 Boston, MA 02108
15 Telephone: 617.307.7100
16 Facsimile: 617.307.7103
17 Email: wverlander@blackbird-tech.com

18 *Attorney for Plaintiff Blackbird Tech LLC d/b/a*
19 *Blackbird Technologies*

20 **UNITED STATES DISTRICT COURT**
21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

22 BLACKBIRD TECH LLC d/b/a
23 BLACKBIRD TECHNOLOGIES,

24 Plaintiff,

25 vs.

26 HEALTH IN MOTION LLC, AND
27 LEISURE FITNESS EQUIPMENT LLC,

28 Defendants.

Case No. 2:17-cv-03488-R-GJS

**JOINT STIPULATION TO
ENFORCE LIABILITY OF
SURETY ON SUPERSEDEAS
BOND**

Courtroom of the
Honorable Manuel L. Real

1 Defendants Health In Motion LLC and Leisure Fitness LLC (collectively,
2 “HIM”) and Plaintiff Blackbird Tech LLC dba Blackbird Technologies
3 (“Blackbird”) hereby stipulate and agree as follows:

4 1. On September 10, 2018, the Court entered an Order granting HIM’s
5 motion for attorneys’ fees and expenses in the amount of \$363,342.80. Dkt. 126.

6 2. On September 12, 2018, Blackbird filed a Notice of Appeal of the
7 order granting attorneys’ fees. Dkt. 127.

8 3. On January 7, 2019, Blackbird filed Supersedeas Bond No. 3407181,
9 issued by Suretec Insurance Company (“SureTec”) in the amount of \$420,000 as
10 security to stay execution of the judgment in this matter. Dkt. 136. Also on
11 January 7, 2019, Blackbird and HIM filed a joint stipulation for approval of
12 supersedeas bond and staying execution of judgment pending appeal. Dkt. 138.

13 4. On January 19, 2019, the Court entered an Order approving the
14 supersedeas bond and staying execution of judgment pending the appeal before the
15 Federal Circuit Court of Appeals. Dkt. 139.

16 5. On December 16, 2019, the Federal Circuit Court of Appeals entered
17 judgment affirming this Court’s order granting attorneys’ fees. Dkt. 141.

18 6. On December 30, 2019, HIM timely filed its bill of costs before the
19 Federal Circuit Court of Appeals, seeking to tax \$465.50 in costs against Blackbird.
20 *See Blackbird Tech LLC v. Health in Motion LLC*, Fed. Cir. No. 2018-2393 (the
21 “Appeal”), Dkt. 60.

22 7. On January 15, 2020, HIM timely filed an application for
23 reimbursement of \$191,876.62 in attorneys’ fees and costs incurred on appeal
24 before the Federal Circuit Court of Appeals. *See Appeal*, Dkt. 61. HIM’s
25 application is currently pending. Blackbird has indicated it will be filing a petition
26 for writ of certiorari with the U.S. Supreme Court, which it believes is due March
27 16, 2020. In the event HIM’s application is granted, the total attorneys’ fees and
28

1 costs incurred by HIM, including post-judgment interest, will exceed the amount of
2 the supersedeas bond. In the event HIM's application is denied or the requested
3 amount is modified in any material respect, or if Blackbird's petition is resolved in
4 its favor, the parties have agreed that the amount of the bond, in excess of the
5 amount HIM is entitled to, if any, after the matter has been fully adjudicated, will
6 be returned to Blackbird.

7 8. On January 22, 2020, the Mandate of the Federal Circuit Court of
8 Appeals was filed in this Court. Dkt. 142.

9 9. Within 10 business days of SureTec's receipt of the Order approving
10 the Joint Stipulation to Enforce Liability of Surety on Supersedeas Bond AND the
11 W9 form for Health in Motion LLC, SureTec will issue a claim check in the
12 amount of \$420,000.00 made payable to Health in Motion LLC. The claim check
13 will be mailed directly to Health in Motion LLC at the address provided on their
14 W9 form. Upon SureTec's payment of the \$420,000.00 to Health in Motion LLC,
15 and HIM's successful deposit of same, the supersedeas bond no. 3407181 is
16 exonerated and SureTec is released from any and all liability under the supersedeas
17 bond.

18 10. Nothing in this Joint Stipulation shall preclude HIM from recovering
19 an amount in excess of \$420,000 from Blackbird.

20 Wherefore, pursuant to Federal Rule of Appellate Procedure 8(b), the Parties
21 move the Court to enter an Order in favor of HIM against SureTec Insurance
22 Company, as surety on the bond, for the full amount of the bond, namely \$420,000.
23
24
25
26
27
28

1 DATED: March 5, 2020

BUCHALTER
A Professional Corporation

2
3 By: /s/Willmore F. Holbrow III
4 WILLMORE F. HOLBROW III
5 Attorney for Defendants

6 DATED: March 5, 2020

BLACKBIRD TECHNOLOGIES

7
8
9 By: /s/Wendy Verlander
10 WENDY VERLANDER
11 Attorney for Plaintiff
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28